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DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689
Writer's Direct Dial (202) 828-2236
A7091 0584

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September 22, 2003

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NOTICE OF EX PARTE
COMMUNICATION

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

SEP 22 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Implementation of the Pay Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128**

Dear Ms. Dortch:

On September 22, 2003, Albert H. Kramer and Robert F. Aldrich, attorneys for the American Public Communications Council ("APCC"), had a meeting with Chris Libertelli, advisor to Chairman Michael Powell.

We discussed APCC's views of record on who should be responsible for paying compensation for calls routed to switch-based resellers ("SBRs").

The matters discussed are summarized in the enclosed material which was provided to Mr. Libertelli at the meeting.

Sincerely,



Robert F. Aldrich

Enclosure
cc Chris Libertelli

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1177 Avenue of the Americas • New York, NY 10036-2714
Tel (212) 835-1400 • Fax (212) 997-9880
www.DicksteinShapiro.com

APCC POSITIONS ON THE "TOLLGATE" ISSUE

I. THE FCC SHOULD RETAIN A FIXC-PAYS RULE

- ◆ Requiring the first facilities-based interexchange carrier ("FIXC") to pay compensation for calls routed to switch-based resellers ("SBRs") is the only rule consistent with the statute.
 - The statute requires the FCC to ensure that payphone service providers ("PSPs") are fairly compensated "for each and every completed . . . call."
 - There is wide agreement that the old SBR-pays rule resulted in major shortfalls and that compensation collections have improved under the FIXC-pays rule
 - The record shows that SBRs as a group cannot be relied upon to accurately track calls and make timely, consistent compensation payments to PSPs
 - IXCs are best situated to track and pay compensation for reseller calls.
 - Unlike PSPs, FIXCs have a market mechanism for tracking calls and recovering their costs
 - The FIXC-pays rule is consistent with compensation case law

II. IF THE FCC ADOPTS A SBR-PAYS RULE, IT MUST IMPOSE RIGOROUS DATA DISCLOSURE, CERTIFICATION AND AUDIT REQUIREMENTS

- ◆ Data disclosure requirements must include full call detail and data on both completed and uncompleted calls.
 - Full call detail means the payphone ANI, toll-free number dialed, date, time-of-day, duration, and identification of the FIXC for the call.
 - FIXCs must list the contact information and toll-free numbers for each of their SBR customers that is qualified to pay compensation.

- Call detail must be provided by FIXCs and SBRs for both the initial call that is terminated to the call processing platform and the further call placed from the platform to the ultimate called party
- ◆ SBRs should not qualify to pay compensation in lieu of FIXCs unless they annually certify to the FCC that they have the capability to track and pay for all compensable calls.
 - If a SBR fails to submit the required certification, the compensation obligation must automatically revert to the FISC.
- ◆ Certification must include an audit report from a qualified third party auditor
 - The audit report must provide a detailed description of the SBR's compensation tracking, recordkeeping, and payment systems and procedures
 - The audit report must describe the SBR's "business rules" for paying compensation.
 - The audit must include system testing and test calling procedures that are invisible to the FCC and fully described in the report
 - Accuracy of compensation tracking must at least equal other networks standards met by the SBR's network.
 - The auditor must provide a sworn statement.
 - The audit report must be available to PSPs.